

## Office of the Secretary, Interior

## §4.251

granting of the petition, and after allowing such persons an opportunity to resist such petition by filing answers, cross petitions or briefs as provided in (c) of this rule.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 24813, Dec. 23, 1971; 43 FR 5514, Feb. 9, 1978]

### § 4.243 Appeals from BIA.

Any appeal filed pursuant to 25 CFR part 15, subpart E, will be referred to the administrative law judge pursuant to §4.210. The administrative law judge will review the merits of the case de novo and conduct a hearing as necessary or appropriate pursuant to the regulations in this subpart. The BIA deciding official must forward to the administrative law judge the entire file upon which the BIA deciding official's decision was based.

[66 FR 32889, June 18, 2001]

### CLAIMS

### § 4.250 Filing and proof of creditor claims; limitations.

(a) All claims against the estate of a deceased Indian held by creditors chargeable with notice of the decedent's death must be filed with the agency within 60 days from the date BIA receives verification of the decedent's death under 25 CFR 15.101.

(b) No claim will be paid from trust or restricted assets when the administrative law judge is aware that the decedent's non-trust estate may be available to pay the claim.

(c) The claims of non-Indians shall be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account. Such claims shall show the names and addresses of all parties in addition to the decedent from whom payment might be sought. Each claim shall be supplemented by an affidavit, in triplicate, of the claimant or someone in his behalf that the amount claimed is justly due from the decedent, that no payments have been made on the account which are not credited thereon as shown by the itemized statement, and that there are no offsets to the knowledge of the claimant.

(d) Claims of individual Indians against the estate of a deceased Indian may be presented in the manner set forth in paragraph (b) of this section or by oral evidence at the hearing where the claimant shall be subject to examination under oath relative thereto.

(e) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(f) A claim, whether that of an Indian or non-Indian, based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

(g) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an administrative law judge's interim order.

(h) Claims of a State or any of its political subdivisions on account of social security or old-age assistance payments shall not be allowed.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 24813, Dec. 23, 1971; 66 FR 32889, June 18, 2001]

### § 4.251 Allowance of administrative expenses and claims.

(a) Upon motion of the Superintendent or a party in interest, the administrative law judge may authorize payment of the costs of administering the estate as they arise and prior to the allowance of any claims against the estate.

(b) After the costs of administration, the administrative law judge may authorize payment of priority claims as follows:

- (1) Claims for funeral expenses (including the cemetery marker);
- (2) Claims for medical expenses for the last illness;
- (3) Claims for nursing home or other care facility expenses;
- (4) Claims of an Indian tribe; and
- (5) Claims reduced to judgment by a court of competent jurisdiction.

(c) After the priority claims, the administrative law judge may authorize